IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3887 OF 2006

IN

SUIT NO. 3187 OF 2006

Denzil De Souza and Ors. .....Plaintiffs.

vs.

Ramona Pinto and Ors. .....Defendants.

Mr.N.H.Seervai, Sr.Advocate with Rahul Chitnis
i/by.Khaitan & Co. for the plaintiffs.
Mr.Gaurav Joshi i/by.Little & Co.
for defendant no.1.
Mr.M.P.Rege for defendant nos.2 and 3.
Ms.F.Vongeyer i/by.D.D'mello for defendant no.4.

CORAM: S.J.VAZIFDAR, J.

DECEMBER 8 , 2006.

P.C. :

. The plaintiff and defendant no.1 are present in

court. By consent, the Notice of Motion is heard finally.

1. The dispute pertains to the sale of the flat by Defendant no.1 to Defendant nos.2 and 3. The plaintiff's contention is that defendant no.1 had no title in respect of the said flat. According to the plaintiffs the flat belongs to the estate of the deceased mother of plaintiff no.1, defendant no.1, defendant no.5, defendant no.6 and one William D'souza whose heirs are Plaintiff Nos.2 to 6. Defendant no.1 however contends that the flat belongs to her exclusively.

2. It is not necessary for the purpose of this application to consider the merits of the rival contentions in this regard. Fortunately the plaintiffs and defendant no.1 have taken an extremely responsible and reasonable stand qua Defendant nos.2 and 3 who would suffer in the event of there being any cloud on their title in respect of the said flat. They have paid the entire consideration for the same. Defendant Nos.2 and 3

purchased the flat for Rs.32 lacs. If the plaintiffs ultimately succeed in the suit, plaintiffs would be entitled to a two-fifth share in the flat i.e. Rs.12,80,000/-. Defendant no.1 has agreed to secure this claim together with interest as may be determined by the Court by agreeing not to sell the flat owned by her namely Flat No.52, Ivorick, St.Cyril Road, Bandra (West), Mumbai-400 050 without giving the plaintiff's advocate four weeks notice of their intention to do so. In view of this undertaking the Plaintiffs have agreed to confirm the sale in favour of the Defendant Nos.2 and 3 unconditionally but without prejudice to their rights and contentions against Defendant No.1. They have further agreed to drop Defendant Nos.2 and 3 from the suit as they now have no claim against them including in respect of the suit flat.

3. The parties have agreed to the following order without prejudice to all her rights and contentions including those mentioned above:-

(i) In view of the defendants aforesaid undertaking which is accepted by the court in respect of the said flat owned by her, the plaintiffs unconditionally and irrevocably confirm the sale of the suit flat to and in favour of defendant nos.2 and 3. The plaintiffs are allowed to drop defendant nos.2 and 3 from the suit.

(ii) The undertaking of defendant no.1 is accepted as far as Flat No.52 is concerned. The same is limited to protecting the alleged rights of the Plaintiff only to the extent of Rs.12,80,000/- and interest thereon as may be determined by the court.

****